



EMPLOYMENT TRIBUNALS

Claimant: Mr F Scoon

Respondent: Moorepay Group Limited

Heard at: Manchester (by CVP)

On: 15 January 2021

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: In person

Respondent: Miss H Gardiner of Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. All claims of indirect discrimination on the grounds of race and/or sex are withdrawn by the claimant and are dismissed.
2. The application of the claimant to amend his claims to add a claim of victimisation contrary to section 27 of the Equality Act 2010 is withdrawn by the claimant and is dismissed. This application was in respect of the facts contained in an email dated 26 November 2020 and which appeared at page 330 in the bundle presented to the Tribunal today.
3. The claim of victimisation contrary to section 27 of the Equality Act 2010 based on the alleged protected act of raising issues of equal pay on 11 May 2019 is dismissed on the grounds that it has no reasonable prospects of success.
4. The claimant's claim of direct discrimination on the grounds of sex and race relating to the position of HR Director in June 2018, Claims and Consultancy Manager and HR Officer are withdrawn and dismissed.
5. The claim of direct discrimination on the grounds of sex and race on the basis of an allegation that the respondent paid the claimant less than his colleagues is withdrawn and dismissed.

REASONS

1. As noted above, a substantial number of the claims which had been set out in a summary of the preliminary hearing/CMD which took place on 27 May 2020 were withdrawn by the claimant and dismissed with his consent. The claimant withdrew these against the background of detailed discussions in which the language of different sections of the Equality Act 2010 was discussed with the claimant against the background of the facts that the claimant was suggesting would substantiate those claims.
2. The respondent had indicated that at today's hearing they wished to make applications that all the claims of the claimant should be struck out on the grounds that they had no reasonable prospects of success. Alternatively, the respondent had indicated that they believed the claimant should be ordered to pay a deposit in respect of proceeding with any or all of his claims on the basis that they had little prospects of success. However, having discussed the claims of the claimant in detail with both the respondent and the claimant it was possible to draw up a list of four separate and clearly identified claims of direct discrimination with the consent of the parties and it was not appropriate to consider those other than for them to proceed to a full hearing.
3. The only other claim which could be clearly identified was a claim of victimisation contrary to section 27 of the Equality Act 2010. This was a claim where the claimant was alleging that the protected act was him having raised equal pay issues in or about May 2019 to managers of the respondent. The claimant then alleged that he was excluded from the annual pay review in November 2019 because he had made that protected act of complaining about equal pay issues.
4. Having identified the claims of the claimant with the consent of the parties, counsel for the respondent responsibly indicated that the respondent now wished only to make an order that the claimant should be ordered to pay a deposit in connection with the victimisation claim just described.
5. Counsel indicated that the clear evidence of the respondent was that the claimant had been excluded from the November annual pay review because the claimant had received a special one-off pay increase which was implemented after 1 August 2019. The Tribunal was referred to a number of documents in the bundle where the respondent said that it was made clear to the claimant at the time of the discussions which were held with him about his special pay increase that he would not then be in line for consideration of an annual increase only a few months later. They pointed the Tribunal to notes of evidence and to draft letters which had been prepared in which this was made clear to the claimant. The respondent said that once a final draft had been prepared that the letter had been sent to the claimant, but he denied ever having received it and there was no evidence to show that he had actually received it. Nevertheless the respondent was very clear that the reason for the claimant being excluded from the annual pay review was because of his receipt of this one-off special pay increase which had followed discussions between the respondent and the claimant.

6. The claimant was therefore challenged by the Tribunal to set out the “facts” on which he would seek to rely in order to persuade the Tribunal that the reason why he had been excluded from the pay review was because of the protected act which he relied upon. The claimant confirmed that he was aware of the relevant authorities relating to burden of proof, including **Igen v Wong**, and he confirmed to the Tribunal that he did not need any of those authorities explaining to him.

7. Following discussion between the claimant and the Tribunal, the claimant confirmed that he accepted he was unable to set out for the Tribunal any facts which would link the protected act with the exclusion from the annual pay review. Indeed the best that the claimant could put forward was that he had “formed the opinion” that there was a link, but he accepted that he had no evidence to establish such a link other than it being his opinion.

8. The Tribunal therefore was very clearly of the view that the claimant, being unable to establish any relevant facts, was pursuing a claim of victimisation which had no reasonable prospects of success. The Tribunal acknowledged that the application of the respondent had only been that the claimant should pay a deposit on the basis that the claim of victimisation had little reasonable prospects of success. However, the view of the Tribunal was that the claim in fact had no reasonable prospects of success and that it should be dismissed on that basis. The Tribunal considered that it was entirely inappropriate for such a claim to proceed to a full hearing on the acceptance by the claimant that he had no evidence or facts to link the protected act to the detriment which he said that he had suffered. That claim of victimisation was therefore dismissed by the Tribunal on the basis that it had no reasonable prospects of success.

9. For the sake of clarity, the only claims which were not dismissed and/or withdrawn at the hearing held on 15 January 2021 were:

- (1) A claim of direct discrimination on the grounds of the protected characteristic of race that the claimant as not appointed to the L & D post;
- (2) A claim of direct discrimination on the grounds of the protected characteristics of both sex and race that the claimant was not provided with appropriate levels of support and development by the respondent between 18 October 2019 and 12 February 2020;
- (3) A complaint that the investigation and conclusion of the claimant's grievance was unduly delayed and this is an allegation of direct discrimination on the basis of the protected characteristic of race;
- (4) Again in respect of the same grievance, the claimant alleges as an act of direct discrimination that the outcome of that grievance was unfavourable.
- (5) The basis of those four claims is set out in the summary of the preliminary hearing which was held on 15 January 2021.

10. It is important to set out in these Reasons that all other claims of the claimant were either withdrawn or dismissed today, and that only those four claims set out above will proceed to a final hearing in June 2022.

Employment Judge Whittaker

Date: 19th January 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

8 February 2021

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